

In re ) Fair Hearing No. 9296  
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Appeal of )

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a 57-year-old woman with an eighth-grade education. She worked until June, 1988, as a cook in a school cafeteria. The job required her to be on her feet and entailed frequent lifting of 25 pounds.

A recently submitted medical report from a hospital physician speculates that the petitioner's continuing hand problems are caused by diabetic neuropathy and Dupuytren's contracture. This doctor opined: "I think certainly she cannot legitimately work given the problem with her left hand at the moment."

Another of the petitioner's physician's recently submitted responses to interrogatories (dated October 13, 1989) regarding the petitioner's physical limitations as well as the following, more recent (January 15, 1990) narrative:

I last saw [petitioner] on 11-29-89 in relation to her blood pressure and for a pneumovax vaccination. She related to me that she did not feel there had been much improvement over the function of her hand prior to surgery. She was given Ibuprofen for musculoskeletal pain relief as a trial, in a dosage of 600 mg. TID.

My records do not indicate whether she is left handed or not, however any repetitious or heavy use of her hand could aggravate the problem. This coupled with her COPD would make anything but light work difficult. Resolution of symptoms involving her hand would be forthcoming, it is hoped. Her COPD is likely to limit her for the rest of her life.

In his interrogatories the doctor had indicated that the petitioner would be limited to "less than 6 hours" of standing or walking in an 8-hour workday.<sup>1</sup>

The above assessments are uncontroverted by any other medical evidence from an examining source. On the basis of the medical evidence it must be found that the petitioner's residual functional capacity is limited, at a maximum, to sedentary work (see infra).

ORDER

The department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically

determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In addition to the above, the regulations provide that an individual of the petitioner's age, education, and work experience, who is limited to unskilled "sedentary work", as defined by 20 C.F.R. § 416.967(a), must be considered disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.01. Since uncontroverted medical evidence establishes that the petitioner is so limited, the department's decision is reversed.

FOOTNOTES

<sup>1</sup>The page of the interrogatories that presumably included the doctor's responses to questions regarding lifting was missing from the hearing officer's packet.

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